

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

In the Matter  
of

Case No. 08-01789

SECURITIES INVESTOR PROTECTION CORPORATION

v.

BERNARD L. MADOFF INVESTMENT SECURITIES, et al.,

Debtors.

-----x

April 13, 2010

United States Custom House  
One Bowling Green  
New York, New York 10004

In Re: Hearing in Trustee's entry into third  
amended and restated asset purchase agreement with Surge  
Trading Inc. f/k/a Castor Pollux Securities, Inc.

Trustee's application for preliminary injunction,  
enforcement of stop declaration that Canavan, Goldsmith and  
Kalman action is void ab initio and a Temporary Restraining  
Order.

B E F O R E:

HON. BURTON R. LIFLAND,

U.S. Bankruptcy Judge

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

1 A P P E A R A N C E S (Continued):

2

3 BAKER HOSTETLER, LLP

4 Attorneys for Irving H. Picard, Trustee

5 45 Rockefeller Plaza

6 New York, New York 10017

7 BY: BIK CHEEMA, ESQ.

8 -and-

9 DAVID J. SHEEHAN, ESQ.

10 -and-

11 MARC E. HIRSCHFIELD, ESQ.

12 -and-

13 KEITH R. MURPHY, ESQ.

14 SECURITIES INVESTOR PROTECTION CORPORATION

15 805 15th Street, Suite 800

16 Washington, D.C. 20005

17 BY: KEVIN H. BELL, ESQ.

18

19

20

21 PROSKAUER ROSE, LLP

22 Attorneys for Surge Trading

23 One International Place

24 Boston, Massachusetts 02110

25 BY: PETER J. ANTOSZYK, ESQ.

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

1 as some of the other multiple claimants will.

2                         Based upon that analysis of those  
3 objections, Your Honor, I would respectfully submit these  
4 objections should be overruled, and the order submitted to  
5 your Honor should be entered with regard to this particular  
6 objection.

7                         I will answer any objections Your Honor may  
8 have.

9                         THE COURT: Does anyone to be heard?

10                        MS. CHAITMAN: Yes, Your Honor, Helen  
11 Chaitman from the law firm of Becker & Poliakoff for  
12 Maureen Ebbel. And with me here today is my colleague  
13 Peter Smith.

14                        I didn't file an objection. I asked Mr.  
15 Sheehan if he would be good enough to provide me with a  
16 list of feeder funds that are the subject of this motion  
17 and he has not done that.

18                        I would ask that the Court direct him to do  
19 that because I think there is some accountability and  
20 concern amongst investors as to whether the vehicle in  
21 which they invested is included within the contemplation of  
22 this motion. It is easy to say feeder fund but, in fact,  
23 there are all kind of investment vehicles that Mr. Madoff  
24 encouraged people to utilize and I am not really sure where  
25 the cut off point is on the feeder fund.

1                   Since many of these investors are foreign  
2 it will take time for the organization of facts relevant to  
3 their particular issues, and I would simply ask that a list  
4 of the feeder fund be provided to us as quickly as  
5 possible.

6                   MR. SHEEHAN: Your Honor, I have no  
7 objection to that. If I failed to communicate this to Ms.  
8 Chaitman, I apologize. We are submitting that list as  
9 part of the application, the complete list of the feeder  
10 fund and the customers associated with those feeder funds  
11 that were contemplated as part of the motion will be filed  
12 as part of the scheduling order I think within two weeks.

13                  Everyone will have this.

14                  MS. CHAITMAN: Yes.

15                  THE COURT: Does anyone else want to be  
16 heard?

17                  MR. BELL: Kevin Bell, on behalf of SIPC.  
18 SIPC supports the application as proposed.

19                  THE COURT: I have no problem with that.  
20 It isolates a group that has a similar issue. The  
21 definition of feeder fund is something that is a little bit  
22 not clear to me.

23                  As Ms. Chaitman points out there are many  
24 types of vehicles that we use to put money into Madoff's  
25 hands.

1                         For example, there are institutions that  
2 take money in and then directly put that money into Madoff.  
3 Some of them are banks and some are financial institutions.

4                         Is there or is there not a difference when  
5 there is a specific understanding that an institution is  
6 investing with Madoff, so that the investors with the  
7 institutions are considered under either the statute or  
8 case law to be a direct claimant?

9                         MR. SHEEHAN: Your Honor, you are  
10 absolutely right.

11                         THE COURT: I am not always right, but I am  
12 just curious.

13                         MR. SHEEHAN: On this you are absolutely  
14 right. We have been using that term quite honestly in a  
15 very generic way.

16                         And the feeder fund is used in a very broad  
17 sense, and I understand Ms. Chaitman's concern as well,  
18 Your Honor. One of the things we want to clarify by this  
19 motion, by identifying the body of feeder funds that we are  
20 talking about here are the ones we are talking about, and  
21 we will define this very specifically for the purpose of  
22 this application as we move forward so everyone will know  
23 to whom this is being addressed.

24                         We are addressing those feeder funds such  
25 as the Ascot asset. Your Honor, no banks will be included.

20

1 No pension funds will be included. No investment groups  
2 will be included.

3 THE COURT: That was the thrust of my  
4 inquiry.

5 MR. SHEEHAN: Pardon?

6 THE COURT: That was the thrust of my  
7 inquiry.

8 MR. SHEEHAN: It will be very discrete.  
9 Even though this will large, it will be a discrete body  
10 legally as to what people commonly refer to as feeder fund,  
11 and we have a very solid description of who they are.

12 THE COURT: Does anyone else want to be  
13 heard?

14 There is no response.

15 MR. SHEEHAN: Thank you, Your Honor.

16 THE COURT: The request for relief is so  
17 ordered.

18 MR. SHEEHAN: Apparently, my order was  
19 also handed up with the earlier order on Surge.

20 THE COURT: It got in the way of my  
21 signature.

22 MR. SHEEHAN: Thank you, Your Honor. I  
23 appreciate it.

24 THE COURT: Next on the calendar of SIPC  
25 versus Bernard L. Madoff Investment Securities.